



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 14-05259
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Catie Young, Esq.

11/21/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On November 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 18, 2015. A notice of hearing was issued on August 13, 2015, scheduling the hearing for October 15, 2015. Government Exhibits (GX) 1-2 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibit (AX) A-O, which were admitted without objection. The transcript was received on October 23, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Department Counsel requested that I take administrative notice of certain facts relating to Iran. The request and the attached documents are included in the record as HE I. The facts administratively noticed are set out in the Findings of Facts, below.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations in ¶ 1.a-d with explanations.

Applicant, who was born in Germany, is 43 years old. His father was a U.S. military officer and the family traveled during Applicant's youth. Applicant is a U.S. citizen who received his undergraduate degree in the United States in 1994. He married his wife, who is a naturalized U.S. citizen, in 2011. (GX 1) He has two children who are U.S. citizens. Applicant completed his first security clearance application in 2013. He believes he has an interim clearance. Applicant has been employed with his current employer, as an account executive, since 2013. (GX 1)

Applicant met his wife in 2008 while they both worked in the same company. (Tr. 26) His wife, who was born in Iran, came to the United States when she was four years old with her family. Applicant's wife has been a naturalized U.S. citizen since 2000. She has no desire to return to Iran to live. She visited Iran in 2003 and in 2009, and has an Iranian passport. She has no intention to renew her Iranian passport. (AX M and N; Tr. 31) She has no remaining immediate family in Iran. (AX I)

Applicant's father-in-law is a dual citizen of the United States and Iran. Until recently, he spent six months each year residing in Iran. Applicant's father-in-law is a mechanical engineer. Applicant met him in 2010, before marrying his daughter. He has been an absent father from Applicant's wife's life. Applicant has seen him about 30-40 times over the past five years. His father-in-law has a limited knowledge of English and Applicant does not speak Farsi. They communicate through Applicant's wife. Applicant's father-in-law has traveled to Iran over the past 25 years and lived in Iran for about six months each year. He would then return to the United States. (AX C)

Applicant's father-in-law is a businessman. He had two companies located in Iran. (Tr. 88) He is of the Bahai faith. He is still legally married to his wife, but they are estranged. It is believed that he was having an affair with a woman in Iran. He also had a drug problem with opium.

Applicant's father-in-law was convicted of (1) Conspiracy to Violate the Iranian Transactions and Sanctions Regulations, a federal felony, and (2) Money Laundering, a felony. (AX A, D and E) He exported goods from the United States to Iran without first obtaining a requisite license. In fact, he never applied for one. (AX B) In June 2014, he was sentenced to 30 months in federal prison. (AX A-D; GX 2) He was also put in a drug rehabilitation program in prison and is now eligible for a halfway house. (Tr. 65)

Applicant and his wife had no knowledge of his father-in-law's illegal conduct until the investigation and court proceedings. (Tr. 58) They also learned that he smoked opium and had some in his home in the United States. Applicant's wife sometimes spoke to her father when he was in Iran. Applicant never had any communications with him when he was in Iran. (Tr.88)

When Applicant's father-in-law returned to the United States to face sentencing, Applicant might see him once a month. (Tr. 60) His wife speaks to him on the phone about once a week. Applicant's father-in-law is now living in a halfway house until December. After that he will be in home confinement and on probation for two years. (Tr. 65) He will be living in the basement of his estranged wife's home. (Tr. 66) His wife still maintains contact with him.

Applicant still has some contact with his father-in-law. He acknowledged that he had dinner with the entire family a few weeks ago. (Tr. 69) Applicant does not trust his father-in-law and does not care to maintain any communications with him. However, he stated that he could not deny his wife permission to visit with or talk with her father. (Tr. 69) Applicant's wife would not maintain contact with him if he left the United States and returned to Iran. (Tr. 71)

Applicant's mother-in-law is a naturalized U.S. citizen, who has lived in the United States since 1990. She came to the United States with her husband, and three daughters. She has some extended family members in the United States who served in the U.S. military. She has worked full time for the past 14 years in the beauty field. She owns a home in the United States and has no plans to return to Iran to live. She also has grandchildren who are U.S. citizens in the United States. She visited Iran for her mother-in-law's funeral in October 2014. She also wanted to visit her parents' grave. She has no immediate family in Iran. Her siblings also live in the United States and are U.S. citizens. She considers herself a Persian American and holds both U.S. and Iranian passports. (AX G) She is of the Baha'i faith. She has no connection to the Iranian government. She has had family members who were arrested by the Iranian government in the past.

Applicant's two sisters-in-law are dual citizens of the United States and Iran. They are both married to U.S. citizens and have children. (AX F) They live in the United States. Applicant met them in 2010. They visited Iran in 2011 to attend a grandmother's funeral. (AX H) They have no plans to return to Iran. They do not know the nature of Applicant's work. They have no connections to the Iranian government. (AX G) Each sister-in-law is employed, and each owns a home in the United States. (Tr. 47)

Applicant has never traveled to Iran. He and his wife own a home in the United States. Applicant has no assets or property in Iran. (GX 2) He has significant assets in the United States. He and his wife do not have any sympathy for the Iranian government.

Applicant was adamant that in the event of any issue that might arise in the future with respect to his father-in-law, he would immediately contact his Facility

Security Officer. (Tr. 71) He would do nothing to help his father-in-law. In fact, he stated that he would help put his father-in-law back in jail if his father-in-law would try to hurt the United States or the family. (Tr. 75) He has no idea if his father-in-law will return to Iran after the completion of his probation. (Tr. 97)

Applicant's wife still loves her father. She does not fully trust him and she puts her husband (Applicant) and her children first. However, she sees her father now that he is back in the United States. Her father also sees his grandchildren.

Applicant submitted four letters of personal and professional reference. He is described as approachable, helpful, and transparent. He has demonstrated consistent performance and works hard. He is honest and is always willing to help others. He is recognized as a top performer. (AX K)

A friend of 30 years described Applicant as patriotic and courageous. The friend referred to the indictment of Applicant's father-in-law and the embarrassment it has caused him. He has been open about his father-in-law's situation, but had no knowledge of the facts before the court proceedings. (AX K 2)

Applicant's father, who is a retired U.S. military officer, wrote a letter stating that he has met Applicant's father-in-law and the rest of his family. He stated that while he believes Applicant's father-in-law's conviction was appropriate. He has observed nothing in actions or behavior that would suggest that he would harm his family or the United States. He states that in the past six years that he has known them, he knows that they are honest people who have embraced the United States and all it has to offer. (AX K 3)

Applicant's work performance rating in 2014 is rated as exceeding standards. (AX J) He is described as having great potential and in the short time that he has been employed, he has been a leader on his team.

Administrative Notice

Iran is a theocratic Islamic republic dominated by Shia Muslim clergy, with ultimate political authority vested in a learned religious scholar. Current U.S. concerns about Iran are based on its efforts to acquire nuclear weapons and weapons of mass destruction; support for and involvement in international terrorism; support for violent opposition to the Middle East peace process; and its human rights abuses, including summary executions, torture, arbitrary arrest and detention, and restrictions on civil liberties. Iran has provided guidance, training, and weapons to Shia political and militant groups in Iraq. It also provides encouragement, training, funding, and weapons to anti-Israeli terrorist groups in its efforts to undermine the Arab-Israeli peace process. Iran's intelligence operations against the United States, including cyber-intelligence capabilities, have dramatically increased in depth and complexity during the past few years. Iran has aggressive programs for collecting U.S. dual-use technologies and advanced materials development, especially in the area of nanotechnology.

The current government of Iran is hostile to the United States. The United States has designated Iran as a state sponsor of terrorism. The United States broke diplomatic relations with Iran in April 1980, prohibits most trade with Iran, and uses multilateral sanctions and diplomatic pressure to contain the threat posed by Iran.

Iran does not recognize dual citizenship. Iranian-born, naturalized U.S. citizens are considered solely Iranian citizens by the Iranian authorities, and they are subject to surveillance, search, harassment, arrest, and imprisonment while traveling or residing in Iran. A U.S. State Department consular information sheet advises that to enter Iran if you are an Iranian-born citizen, regardless of any naturalization process, one must present an Iranian passport.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline B (Foreign Influence)

The security concern under Guideline B is set out in AG ¶ 6 as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

A disqualifying condition may be raised by “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(a). A disqualifying condition also may be raised by “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(b). Finally, another disqualifying condition, “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion” is applicable. AG ¶ 7(d)

Applicant’s father-in-law is a dual citizen of Iran and the United States. For the past 25 years he has spent six months in the United States and six months in Iran. He was convicted of two felonies in 2014 involving Iranian export and sanctions violations and is now serving a sentence for the crimes. Applicant, his wife, his mother-in-law and his sisters-in-law maintain contact with him. Applicant’s wife spoke to her father while he was in Iran. Applicant lives with his spouse in the United States. However, under either disqualifying condition, security concerns could arise in connection with the potential that hostile forces might seek protected information from Applicant by threatening harm to his wife and her family. Based on this evidence, AG ¶¶ 7(a), 7(b), and 7(d) are raised.

Since the Government produced evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Security concerns under this guideline can be mitigated by showing that “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.” AG ¶ 8(a). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App.

Bd. Sep. 22, 2003). Similarly, AG ¶ 8(b) can mitigate concerns when “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.”).

Applicant is a U.S. citizen and was raised in a military family. He married his wife in 2011. She is a dual citizen of the United States and Iran. Her mother and two sisters live in the United States but are also dual citizens of the United States and Iran. Applicant’s father-in-law, a dual citizen of the United States and Iran, has lived for six months in Iran and six months in the United States for the past 25 years. He was recently convicted of two felonies involving Iran. He is now serving his sentence. He will be staying on home confinement in Applicant’s mother-in-laws house. Applicant and his wife have contact with his father-in-law. There is no other extended family in Iran. His in-laws have no knowledge of Applicant’s work. They have no connection to the Iranian Government. Applicant has substantial interests in the United States. There is some mitigation in this case with respect to Applicant’s mother-in-law and sister-in-law. He and his spouse’s relationship with his father-in-law is more problematic.

Applicant’s relationship with the United States is not questioned. However, his wife and her family could create a potential conflict of interest. Applicant will not stop his wife from maintaining contact with her father. His father-in-law has for 25 years been living in Iran for six months of the year. There is no evidence, that terrorists, criminals, or the Iranian government, or those conducting espionage have approached or threatened Applicant’s father-in-law or other family members but since he has been convicted of a felony involving Iran, it is not known what other forces may be at play. Applicant’s father-in-law may return to Iran. No one in the family is certain what he might do when he completes his probation and home confinement.

Applicant spoke about his undivided loyalty to the United States. Applicant has deep and longstanding relationships and loyalties in America, but he also has loyalty to his wife. He has established partial application of AG ¶ 8(b).

Applicant has some contact with his father-in-law. Under AG ¶ 8(c) the contact is not so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation. There is no mitigation under 8(c). Applicant has not met his burden of mitigating the security concerns under the foreign influence guideline.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 43 years old. He is a U.S. citizen. His family is in the United States with him. He has two children from his marriage to his wife who is a naturalized U.S. citizen. Applicant's parents are U.S. citizens. His financial assets are substantial. Applicant has excellent references and a good job evaluation. There is no evidence that terrorists or other foreign elements have specifically targeted Applicant.

A Guideline B decision concerning Iran must take into consideration the geopolitical situation and dangers there. Iran is a dangerous place. Iran supports terrorists, who threaten the interests of the United States, and those who cooperate and assist the United States. The Iranian government does not comply with the rule of law or protect civil liberties. Iran aggressively seeks intelligence information from the United States. Iran and the United States continue to have profound policy disputes.

Unresolved significant foreign influence security concerns from Applicant's father-in-law and his wife's connection to her father warrant great weight. Applicant acknowledged that while he does not care for his father-in-law, he knows his wife loves her father and Applicant would not stop his wife from seeing her father. Applicant's father-in-law has spent many years living in Iran. He has been convicted of a crime involving the violation of Iranian exports and sanctions regulations. He may or may not return to Iran. He is living in Applicant's mother-in-law's home. Applicant and his spouse's connections to his father-in-law, make Applicant more vulnerable as a target or coercion of lawless elements in Iran, including the Iranian government. Applicant has not mitigated the foreign influence security concerns. He has not carried his heavy burden.

For all these reasons, Applicant has not mitigated the security concerns under foreign influence. Clearance is denied.

